IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1578 OF 2003.

Prakash Chandrakant Rane. ... Petitioner
Versus.
Smt.Pratibha Prakash Rane & anr. ... Respondents.

Shri L.R.Sawant for the Petitioner.
Shri Udaipuri for the Respondent No.1.
Shri R.Y.Mirza, A.P.P.for State.

CORAM : ABHAY S. OKA, J.

DATED : 20th July, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service for the Respondent No.2. The learned Counsel for Respondent No.1 also waives service.

2. The Respondent No.1 filed a private complaint against the Petitioner in the Court of the learned Metropolitan Magistrate alleging commission of offence under section 494 of the Indian Penal Code. The Application for discharge was made by the present Petitioner. By order dated 18th June 2003 the Application for discharge was rejected by the learned Metropolitan Magistrate. By the same order the learned Magistrate directed that the case will proceed for framing charge. The Revision Application was preferred by the Petitioner for challenging the order dated 18th June 2003. The learned Additional Sessions Judge dismissed the said Criminal Revision Application by

order dated 18th September 2003 by observing that the Petitioner and his Advocate always remained absent.

3. The challenge in this writ petition is to the order dated 18th September 2003 passed in the Criminal Revision Application filed by the Petitioner as also to the order dated 18th June 2003 passed by the learned Magistrate. On 19th August 2004 this Court by an interim order has stayed further proceedings pending in the Court of the Metropolitan Magistrate.

4. In my view it is not necessary to go into the merits of the order passed by the learned Metropolitan Magistrate in the discharge application. On 18th September 2003 the Revision Application preferred by the Petitioner was dismissed as the Advocate appointed by the Petitioner was not present. In my view the Revision Application filed by the Petitioner deserves to be restored with a direction to dispose of the same expeditiously.

5. Hence the following order is passed:

(i) The order dated 18th September 2003 passed by the learned Additional Sessions Judge is quashed and set aside and Criminal Revision Application No.597 of 2003 is restored.

(ii) Parties will appear before the learned Sessions Judge, Mumbai, on 16th August 2005 in the said Criminal Revision Application. The learned Sessions Judge may hear the Revision Application himself or may assign the same to any other appropriate Court.

(iii) The Revision Application preferred by the Petitioner shall be disposed of as expeditiously as possible and preferably on or before 31st December 2005.

(iv) All questions on merits in the said Criminal Revision Application are kept open.

(v) The Petitioner is directed to pay to the Respondent No.1 costs of Rs.5000/- within a period of two weeks from today.

(vi) Rule is made absolute in the above terms.

(vii) The parties and the concerned Court to act on an ordinary copy of this order.

Judge.